

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

K.P. and L.M.)	
)	
Petitioner,)	
v.)	CASE NO. 4:20-cv-00187-BP
)	
LONE JACK C-6 SCHOOL DISTRICT,)	
DR. MATTHEW TARWATER,)	
KATHY BUTLER and KELLIE ROTH)	
)	
Defendants.)	

**DEFENDANT MATTHEW TARWATER, EdD'S MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM AND LACK OF SUBJECT MATTER JURISDICTION**

Defendant Matthew Tarwater, Ed.D (hereinafter "Dr. Tarwater" and/or "defendant")
respectfully moves the Court to:

- Dismiss Counts III and IV of plaintiffs' Complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6);
- Dismiss Count VII for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) or, in the alternative, for failure to state a claim under Fed. R. Civ. P. 12(b)(6); and,
- In the alternative to dismissing the individually enumerated counts on the grounds specified above, to dismiss the entire action based on plaintiffs' failure to comply with Fed. R. Civ. P. 10(a), which is jurisdictional in nature, implicating Fed. R. Civ. P. 12(b)(1), 12(b)(2)¹ and/or in the alternative, 12(b)(6).

The arguments and authorities in support of Dr. Tarwater's motion are set forth fully in the accompanying Suggestions in Support.

¹ As discussed in the accompanying Suggestions in Support, caselaw does not clearly indicate whether the jurisdictional deficiency implicated by a failure to comply with Rule 10(a) goes to subject matter jurisdiction, personal jurisdiction, or some other form of jurisdiction.

WHEREFORE, for the foregoing reasons and those fully explained in the accompanying Suggestions In Support, this Court should: (1) dismiss Counts III, IV, and VII against Dr. Tarwater; (2) having dismissed all Counts against the Dr. Tarwater, dismiss Dr. Tarwater as a defendant; (3) in the alternative to dismissing the individually enumerated counts, the Court should dismiss the entire action based on plaintiffs' failure to comply with Fed. R. Civ. P. 10(a); and (4) grant such further and necessary relief as implicated by Dr. Tarwater's motion and accompanying Suggestions in Support.

Respectfully submitted,

EVANS & DIXON, L.L.C.

/s/Stephanie A. Preut

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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2020, I filed the foregoing document via the Court's ECF system, which will cause a true and correct copy of the same to be served electronically on all ECF-registered counsel of record.

/s/Stephanie A. Preut

ATTORNEY FOR DEFENDANT